

REGULATE AIR QUALITY ON THE SOUTHERN UTE INDIAN RESERVATION

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

S. 2065

TO PROVIDE FOR THE IMPLEMENTATION OF AIR QUALITY PROGRAMS
DEVELOPED PURSUANT TO AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE SOUTHERN UTE INDIAN TRIBES AND THE STATE OF
COLORADO CONCERNING AIR QUALITY CONTROL ON THE SOUTHERN
UTE INDIAN RESERVATION

JULY 18, 2002
WASHINGTON, DC



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REGULATE AIR QUALITY ON THE SOUTHERN UTE INDIAN RESERVATION

THURSDAY, JULY 18, 2002

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 11:36 a.m. in room 485, Russell Senate Building, Hon. Ben Nighthorse Campbell (vice chairman of the committee) presiding.

Present: Senator Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SEN- ATOR FROM COLORADO, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator CAMPBELL. If we could proceed, we still have another bill to go.

Those who are concerned about water can leave, and those who are concerned about air, stay. [Laughter.]

We will now receive testimony on legislation that I introduced along with Senator Allard in March, 2002. The bill is S. 2065, and it provides for the Congressional ratification of an agreement entered into by the State of Colorado and the Southern Ute Tribe. After many years of negotiations, I am very pleased that the parties were able to reach an agreement and that the Environmental Protection Agency has endorsed this agreement.

[Text of S. 2065 follows:]

107TH CONGRESS
2D SESSION

S. 2065

To provide for the implementation of air quality programs developed pursuant to an Intergovernmental Agreement between the Southern Ute Indian Tribes and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2002

Mr. CAMPBELL (for himself and Mr. ALLARD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for the implementation of air quality programs developed pursuant to an Intergovernmental Agreement between the Southern Ute Indian Tribes and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Southern Ute and Colorado Intergovernmental Agree-
6 ment Implementation Act of 2002”.

1 (b) PURPOSE.—The purpose of this Act is to provide
2 for the implementation and enforcement of Clean Air Act
3 air quality control programs developed pursuant to an
4 Intergovernmental Agreement entered into by and between
5 the Southern Ute Indian Tribe and the State of Colorado
6 on December 13, 1999, providing for the regulation of air
7 quality within the exterior boundaries of the Southern Ute
8 Indian Reservation and establishing a Southern Ute In-
9 dian Tribe/State of Colorado Environmental Commission.

10 **SEC. 2. STATEMENT OF FINDINGS.**

11 The Congress, after review and in recognition of the
12 purposes and uniqueness of the Intergovernmental Agree-
13 ment between the Southern Ute Indian Tribe and the
14 State of Colorado, finds and declares that—

15 (1) the Intergovernmental Agreement is consist-
16 ent with the special legal relationship between Fed-
17 eral Government and the Southern Ute Indian tribe;
18 and

19 (2) air quality programs developed pursuant to
20 the Intergovernmental Agreement and submitted by
21 the Tribe for Environmental Protection Agency ap-
22 proval can be implemented in a manner that is con-
23 sistent with the Clean Air Act (42 U.S.C. 7401 et
24 seq., 91 Stat. 685, Public Law 95–95, Aug. 7, 1977,
25 as amended).

1 **SEC. 3. TRIBAL AUTHORITY.**

2 (a) AIR PROGRAM APPLICATIONS.—The Adminis-
3 trator of the Environmental Protection Agency is author-
4 ized to treat the Southern Ute Indian Tribe in the same
5 manner as a State under section 301(d) of the Clean Air
6 Act (42 U.S.C. 7601(d), 91 Stat. 685), as amended, for
7 air program applications that the Tribe submits to the En-
8 vironmental Protection Agency to implement and carry
9 out the Intergovernmental Agreement entered into by and
10 between the Southern Ute Indian Tribe and the State of
11 Colorado in a manner consistent with the Clean Air Act.
12 If the Administrator approves any such air program appli-
13 cation of the Southern Ute Indian Tribe, the approved
14 program shall become applicable to all air resources within
15 the exterior boundaries of the Southern Ute Indian Res-
16 ervation.

17 (b) TERMINATION.—If the Southern Ute Indian
18 Tribe or the State of Colorado terminates the Intergovern-
19 mental Agreement referred to in subsection (a), the Envi-
20 ronmental Protection Agency shall promptly take appro-
21 priate administrative action to withdraw such treatment
22 as a State authorization.

23 **SEC. 4. CIVIL ENFORCEMENT.**

24 (a) IN GENERAL.—In the event any person fails to
25 comply with a final civil order of the Southern Ute Indian
26 Tribe or the Southern Ute Indian Tribe/State of Colorado

1 Environmental Commission made pursuant to a Clean Air
2 Act or other air quality program established under the
3 Intergovernmental Agreement between the Southern Ute
4 Indian Tribe and the State of Colorado, the Tribe or the
5 Commission, as appropriate, may file a petition for declar-
6 atory or injunctive relief, or for other orders in aid of en-
7 forcement, in the United States District Court for the Dis-
8 trict of Colorado, which court shall have jurisdiction to
9 hear such petition.

10 (b) RULE OF CONSTRUCTION.—Nothing in this Act
11 shall be construed to alter, amend, or modify the right
12 or authority of any person, as defined in section 302(e)
13 of the Clean Air Act (42 U.S.C. 7601(e)), to bring an ac-
14 tion under section 304 of such Act (42 U.S.C. 7603).

15 **SEC. 5. JUDICIAL REVIEW.**

16 Any decision by the Southern Ute Indian Tribe/State
17 of Colorado Environmental Commission that would have
18 been subject to appellate review if it had been made by
19 the Environmental Protection Agency—

20 (1) shall be subject to appellate review by the
21 United States Court of Appeals for the Tenth Cir-
22 cuit; and

23 (2) may be reviewed by such Court of Appeals
24 applying the same standard that would be applicable

1 to a decision of the Administrator of the Environ-
2 mental Protection Agency.

3 **SEC. 6. DISCLAIMER.**

4 Nothing in this Act is intended to, nor shall it be
5 construed as, amending, modifying, repealing, or in any
6 other way enlarging or diminishing the provisions of the
7 Clean Air Act (42 U.S.C. 7401 et seq., 91 Stat. 685, Pub-
8 lic Law 95–95, Aug. 7, 1977, as amended), or the Act
9 of May 21, 1984 (98 Stat. 201, 202, Public Law 98–290;
10 25 U.S.C. 668 note), an Act to Confirm the Boundaries
11 of the Southern Ute Indian Reservation in Colorado, or
12 any lawful administrative rule promulgated pursuant to
13 such statutes, or as affecting or influencing in any manner
14 any past or prospective judicial interpretation or applica-
15 tion of such statutes by the United States, the Southern
16 Ute Indian Tribe, or the State of Colorado or any Federal,
17 tribal, or State court.

○

Senator CAMPBELL. Before we proceed, let me make just a couple of points.

The Clean Air Act clearly authorizes Indian tribes to exercise jurisdiction over all the lands within their reservations, even the non-Indian fee lands on the reservations. Tribes have both the inherent right to exercise jurisdiction, and the Clean Air Act, itself, includes procedural and other protections to ensure that this authority is exercised in a fair and responsible manner.

With respect to the Southern Ute Tribe, however, a statute enacted in 1984 appears to prevent the tribe from exercising inherent jurisdiction over non-Indians on fee lands. I share the tribe's concerns, being a resident in that area, that this 1984 act might allow a party to challenge the authority delegated to it under the Clean Air Act.

I certainly applaud the response of the tribe and the State to this possible dilemma. Instead of leaving the conflict to courts again, they have forged an agreement that is before us today.

I am delighted to see my good friend here, the chairman of the Southern Utes, Leonard Burch, and my colleague from the Legislature in Colorado, who served right after I left, Renny Fagan. Nice to have you here.

With that, why don't we go ahead with Chairman Burch. Would you like to proceed?

**STATEMENT OF LEONARD BURCH, CHAIRMAN, SOUTHERN
UTE INDIAN TRIBE, IGNACIO, CO**

Mr. BURCH. Thank you, Senator Campbell, vice chairman of the committee. I am Leonard Burch, chairman of the Southern Ute Tribal Council. Thank you for inviting the tribe to testify today regarding S. 2065 entitled:

A Bill to Implement the Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado Regarding Air Quality Control on the Southern Ute Indian Reservation.

It is my pleasure to express the tribe's support for this important legislation. In your packet, Senator Campbell, we have a map of our reservation. It is checkerboarded. Within the boundary of the reservation there is Indian land, non-Indian land, and some Federal lands.

To give background, for over 10 years the State, the tribe, and the U.S. Environmental Protection Agency have disagreed over tribal and State eligibility to receive delegation of authority to administer programs under the Clean Air Act on the Southern Ute Reservation. Under the 1984 law that confirmed the boundaries of the reservation, the tribe relinquished territorial jurisdiction over non-Indians conducting activities on non-Indian lands.

Amendments to the Clean Air Act in 1990, however, authorized EPA to delegate primacy to tribes with respect to administration of various programs under the statute and arguably restored tribal jurisdictional authority for reservation-wide air quality program.

Rather than allow ourselves to become embroiled in bitter and costly litigation that would probably result in a decision unacceptable to all parties, tribal and State government officials have formulated a resolution supported by all.

As you know, Mr. Chairman, we worked this thing out with the State, and we have come up with this verifying legislation that is acceptable.

This legislation confirms the authority of EPA to grant to the tribe treatment as State status under the Clean Air Act for such time as the governmental agreement remains in effect. The status will enable the tribe to administer a single air quality program on all lands within the exterior boundaries of the Southern Ute Indian Reservation, as delegated by EPA and in accordance with rules promulgated by the Environmental Commission.

Additionally, this legislation provides for exclusive Federal judicial review of final action by the Environmental Commission and authorizes the Southern Ute Tribe or the Environmental Commission, as appropriate, to file in Federal court—a petition for declaratory or injunctive relief or other orders in aid of enforcement for person who had failed to comply with final civil order of the tribe or the Environmental Commission made pursuant to the air quality program established under the inter-governmental agreement.

Mr. Chairman, the legislation, as you know, was worked on together by the State, the tribe, the Governor's office, the attorney general's office, and the State General Assembly that passed the resolution this spring. It requires the approval of the Congress. At the end of this month more information will be given on that by the company group here.

The resolution of these complex jurisdictional problems present on the Southern Ute Reservation has long been a challenge. Unlike the relationship between many other States and tribes, in recent years the State of Colorado and Southern Ute Indian Tribe have been able to amicably resolve several difficult jurisdictional issues. A spirit of cooperation and willingness of the State and the tribe to negotiate on a government-to-government basis led to the development of the agreement.

S. 2065 is needed to implement and enforce the unique and innovative air pollution control between the State of Colorado and the Southern Ute Tribe.

Mr. Chairman, I appreciate the time. I hope the committee will pass this very important legislation so we can move on to implement the agreement.

Again, I would like to thank your staff and the staff of Chairman Inouye for the hard work that they have given us to get this legislation to where we are today.

Thank you.

Senator CAMPBELL. Thank you.

[Prepared statement of Chairman Burch appears in appendix.]

Senator CAMPBELL. You were accompanied by Fran King Brown. Were you prepared to make some comments, too, Fran?

Ms. BROWN. Yes; I am, sir.

Senator CAMPBELL. All right.

STATEMENT OF FRAN KING BROWN, DIVISION HEAD, ENVIRONMENTAL PROGRAMS DIVISION, SOUTHERN UTE INDIAN TRIBE, IGNACIO, CO

Ms. BROWN. The first thing I'd like to do is just go over the key terms of the agreement.

As encouraged by Congress in the Clean Air Act, the Southern Ute Indian Tribe and the State of Colorado have entered into this intergovernmental agreement. The agreement provides for joint participation by the tribe and the State for regulation of air quality on the reservation. Under the agreement, a joint commission has been created by a subsequently enacted State and tribal law. The Commission is composed of six members, three of whom are appointed by the Governor and three of whom are appointed by the tribal council. The Commission is to be known as the "Southern Ute Indian Tribe State of Colorado Environmental Control Commission" and has two main responsibilities.

First, the Commission will determine the specific Clean Air Act or other programs that should apply to the reservation and establish program standards for managing the continued discharge of pollutants.

Second, the Commission will review appealable administrative actions. The tribe will incorporate the standards set by the commission as part of its application to EPA for delegation of authority to administer Clean Air Act programs.

Once the delegation is received, the tribe will have the responsibility for day-to-day administration and enforcement of standards, rules, and regulations adopted by the Commission. Civil enforcement actions taken by the tribe will be subject to administrative review by the Commission.

It is contemplated that the final decisions of the Commission will be subject to judicial review in Federal court.

The cost associated with the tribe's administration of the program and the necessary expenses of the Commission will be funded primarily through permit fees.

As required by the agreement, a tribal resolution was enacted in January, 2000, authorizing the creation of the Commission and approving implementation of the agreement. Parallel State legislation approving the agreement was adopted by the Colorado General Assembly and signed by Governor Owens on March 15, 2000.

The agreement gives Congress until December 13, 2002, to adopt Federal legislation. If the Federal legislation is not enacted before that time, then the agreement will become null and void and the parties retain their previous status.

In addition to the bill as it stands, the tribe has seen a need to ask for an amendment to this bill, and the tribe's attorney, Sam W. Maynes, will address that.

Senator CAMPBELL. Okay. Sam W., Junior. I guess I shouldn't use that word "junior" in this day and age.

STATEMENT OF SAM W. MAYNES, ATTORNEY, SOUTHERN UTE INDIAN TRIBE

Mr. MAYNES. Thank you, Mr. Vice Chairman. My name is Sam W. Maynes. I'm an attorney for the Southern Ute Indian Tribe.

As Chairman Burch indicated, the tribe urges the committee's approval of the bill, but the tribe also respectfully requests that the committee consider amending the bill so as to remove section 4B. Section 4B of the bill provides that nothing in the bill will alter the right of a person to bring what is known as a "citizen's suit" pursuant to section 304 of the Clean Air Act.

The tribe is concerned that the inclusion of that provision will subject the tribe, the Southern Ute Indian Tribe, to citizen suit liability in situations where neither states nor other tribes would be subject to such liability.

Under the Clean Air Act, the citizen's suit provision applies to States only to the extent permitted by the 11th amendment. In other words, States retain, under the Clean Air Act, their 11th amendment immunity from suit.

In 1990, the Congress directed EPA to determine which provisions of the Clean Air Act it was appropriate to apply to tribes who receive treatment as a State status. In its regs, EPA determined that the citizen's suit provision was one of the provisions for which it was not appropriate to treat tribes as States.

There were two reasons for that. One was EPA recognized and was concerned that a determination that the citizen's suit provision applied to tribes would constitute an administrative waiver of tribal sovereign immunity. Second, EPA did not want to or was concerned that application of the citizen's suit provision to tribes might hinder the development of tribal air programs.

Early in their development, EPA was concerned that resources might have to be committed to litigating citizen's suits rather than building the tribe's air program.

In conclusion, Mr. Vice Chairman, the tribe is concerned and objects to the inclusion of the citizen's suit language in the bill because it will subject the tribe to citizen's suit liability in situations where neither States, because of their 11th Amendment immunity, nor other tribes, because of EPA's determination, would be subject to such liability.

We have consulted with EPA about this matter, and they have indicated to us that they do not object to the removal of that provision.

Thank you, Mr. Vice Chairman.

Senator CAMPBELL. To my knowledge, no one on our committee has a problem with removing section 4B, nor does anybody in the EPA, but this bill has also been assigned to the Environment and Public Works Committee, and I'm not sure about that committee, but staff is working with them already and hopefully will be able to do that without any problem, remove that section.

Also, at this time, before I ask a few questions, I want to introduce for the record a letter from Edward Krenick, USEPA, and the testimony in support of S. 2065 by the administrator, Christie Todd Whitman.

[Letter of Mr. Krenick and testimony of Ms. Whitman appear in appendix.]

Senator CAMPBELL. Renny, if you would like to go ahead.

**STATEMENT OF RENNY FAGAN, DEPUTY ATTORNEY GENERAL,
STATE OF COLORADO, DENVER, CO**

Mr. FAGAN. Thank you, Mr. Chairman.

I'm Deputy Attorney General Renny Fagan here representing Attorney General Ken Salazar from the State of Colorado. Attorney General Salazar was very instrumental in getting these negotiations going and has been fully supportive of the agreement.

In addition, I also bring the support of Governor Bill Owens and his administration to the agreement. The Governor's office was also very involved in the negotiations, and the State Department of Public Health and Environment has been also there every step of the way and continues to work with the tribe on the purposes of the agreement.

Finally, in the spirit of cooperation, also there should be submitted in the record a letter from the Colorado Petroleum Association representing the oil and gas producers in the area that does support both this legislation and the agreement.

Senator CAMPBELL. We'll include that letter in the record.

[Letter from the Colorado Petroleum Association appears in appendix.]

Mr. FAGAN. Senator Campbell, we very much appreciate your bringing this bill forward. We also appreciate Senator Allard cosponsoring the legislation. As has been mentioned, the agreement calls for Federal legislation to accomplish a couple of important key objectives that would, once adopted by Congress, make the agreement fully enforceable and fully able to be implemented by the parties.

This agreement represents another historic agreement between the State of Colorado and the Southern Ute Indian Tribe to resolve matters without litigation, but to really focus on a practical solution, and our practical solution here is how to have clean air for all the residents of the area of the State in which you reside; the Commission, which is made up of the three tribal appointees and the three State appointees, would establish the rules and regulations for the air quality authority and also serve as the appellate review panel.

We feel that, by having a jointly shared authority, but have the day-to-day administration done by the tribe, that this is the best way to regulate air quality in that area and also is consistent with the purposes of the Clean Air Act's authorization to treat tribes as a State for purposes of air quality.

There are a couple of key pieces to the legislation that I would just like to comment on briefly.

The first is section three with regard to tribal authority. This is the section of the bill that authorizes the Environmental Protection Agency to treat the tribe as a State under this kind of arrangement. The specific uniqueness of it is that, while the tribe will receive the delegation from the EPA, that delegation exists only so long as the Commission and the agreement are in effect, and that, in effect, the delegation is exercised by the Commission's purpose under the agreement.

So, because that perhaps could be argued by some as being a little unusual, we wanted to make sure that Congress would fully authorize the EPA to do that so that we didn't have issues down the road.

A second part of that section 3 that's important to the State is that both parties provided in the agreement that either party could terminate the agreement if it didn't work out the way we wanted it to. While we are fully committed to its success, there could come a time in the future where it didn't work out the way we envisioned, and in that case the agreement provides that both parties

would go back to their original positions and the delegation would cease, and so we wanted to make sure that the Federal legislation also included that, and that is included in paragraph 3A that if the agreement is ever terminated that the EPA would take the appropriate administrative action to withdraw delegation. So a key part of the agreement is to make sure that the EPA would authorize this and help us enforce the terms of the agreement.

A second key part of S. 2065 has to do with the Federal jurisdiction. The parties discussed how to make all orders of the tribe and the Commission fully enforceable and also what would be the appropriate judicial review body. Because we set this up to be a truly cooperative entity in that we had three/three on the Commission so it takes consensus in order to do anything, we also decided that it would not be appropriate for the courts of the other entity being the place where enforcement would occur, so instead we thought that the Federal courts would be the best place to do that and would be a neutral forum. We also thought that was consistent in that the Commission would serve as the final agency action and would be like the EPA if the EPA had been running a Federal program within the reservation, so therefore it seemed logical to us to have the Federal courts be both the enforcement and the judicial review. Therefore, sections 4 and 5 of the bill would clearly state that the Federal court does have jurisdiction in those two matters.

We think this is important to make sure everything is enforceable. At the same time, the State's experience in running its own air program is that it is rare to have a court action, particularly at the judicial review level; therefore, we don't see this as a burdensome thing to place upon the Federal courts in Colorado, but it is necessary to accomplish through this legislation.

Finally, the bill provides that this bill is unique to this specific agreement. It does not change any piece of the Clean Air Act. It does not change any piece of the Public Law 98-290, which is the key jurisdictional piece between the tribe and the State. It only is to implement this legislation.

In closing, Mr. Chairman, I would also say that the State does support the tribe's request to delete section 4B regarding the citizen's suits. We see that as something that should be done in accordance with the EPA's tribal authority rule and makes sense in the context of our agreement.

We appreciate your bringing this bill forward. We also appreciate the staff's work to bring the bill to this level. We look forward to Congress adopting this so that we can finally move forward and get this thing fully in gear.

[Prepared statement of Mr. Fagan appears in appendix.]

Senator CAMPBELL. We only have about 30 working days here, as you probably know, this year before we are out, so we will have to really push to move this one through the process in the Senate and House side both.

Let me maybe just ask a couple of questions for the record, first to Chairman Burch.

Mr. Fagan indicated that a Federal court was chosen by the parties as the best venue because it is a neutral forum. What factors came up in that discussion? Did the discussion involve claims first brought in a tribal court and then into a Federal court?

Mr. BURCH. Senator, I'm going to refer to my attorney there.

Senator CAMPBELL. Good. That's what I usually do, too. Go ahead, Mr. Maynes.

Mr. MAYNES. Thank you, Mr. Vice Chairman. There was discussion about claims going into tribal court, and we had some discussion with the staff about that matter, as well.

Senator CAMPBELL. Did any non-Indian residents express discomfort about going into the tribal court?

Mr. MAYNES. You know, I think their discomfort was probably expressed through the State. I mean, the State expressed concern about disputes going to a neutral forum and, as Mr. Fagan stated, it was the desire of the parties that this be a completely cooperative agreement and approach to air quality, and, in keeping with that spirit of cooperation, it was felt like Federal court would be the most appropriate forum.

Senator CAMPBELL. Well, since that reservation is checkerboarded, there are a lot of non-Indians who live on the reservation. Were they involved at all in the discussion or were they aware of it or anything?

Mr. MAYNES. There was a public meeting—I'm trying to think when. It probably was 15 months ago—where they expressed some of their concerns. As a result—

Senator CAMPBELL. So they're not going to come running in here and say they didn't know anything about it?

Mr. MAYNES. Certainly not.

Senator CAMPBELL. Okay.

Mr. MAYNES. Certainly not.

Senator CAMPBELL. All right. Let me ask about the joint commission, Leonard. What sort of response did you get from tribal members, Leonard, or tribal businesses about being subject to an entity like a Commission that is not a tribal body? Did anybody see that as giving up some tribal sovereignty?

Mr. BURCH. No; we have several commissions that do similar operation that they sit on the boards and commissions and all that. This certainly was supported by the tribal council. They didn't have a problem with that to get it going.

Senator CAMPBELL. Well, the Southern Utes have set really a model for a lot of work with non-tribal governments with the State and the counties, and I certainly admire that.

As I remember, there were about nine different jurisdictions down there that have some law enforcement ability or authority, because it is checkerboarded. Have negotiations on this bill set any kind of a rationale or a model that might be used to broaden that cooperation with areas like some of the law enforcement jurisdictions? Maybe Renny could answer that. You might not even know. I just thought about it.

Mr. FAGAN. Well, I think we have—as issues of jurisdiction and shared authority have come up, the State and the tribe have addressed those. For example, after this agreement we negotiated an agreement regarding driver's license revocation that also recognized the sovereignty of both the State and the tribe and accomplished the objectives of both governments to have safe roads and drivers that are safe on the roads.

Senator CAMPBELL. Yes.

Mr. FAGAN. We haven't specifically addressed the law enforcement issue yet.

Senator CAMPBELL. Well, that's part of it. The reservation has about 680,000 acres, and about 378,000 or so are owned in fee with many non-Indian residents living there, as I mentioned. In the negotiation process that led to a conclusion of a single authority, what were some of the issues or factors that came up?

Mr. FAGAN. Mr. Chairman, I think some of the factors were how could we establish an entity that would truly be shared, and that's where the three/three membership came in.

A second—and this is written into the agreement—is to basically give wide latitude to the Commission to fashion an air quality program that would fit the unique needs of the area, which would include the economic, environmental, and cultural components of that.

Senator CAMPBELL. What's the makeup of the Commission? Some Indian, some non-Indian, some State, some tribal, or——

Mr. FAGAN. There are three appointees by the Governor and three by the tribal council.

Senator CAMPBELL. For six total. Yes.

Mr. FAGAN. We also, during the agreement, factored in somewhat of a process in that the Commission would hold public hearings as it looks at considering rules and regulations, and ultimately, like the application to become treated as a State, and other things like that, so we provided local input.

Also, as I mentioned earlier, we provided for termination if things didn't work out the way that we envisioned. So we don't expect that to happen, but, in terms of especially on the State side for the residents of the area, and because the State has passed the State law that empowers the Commission to have authority over non-Indians on the fee lands, we thought that that kind of thing would be important if we ever got to that point.

So I think on the whole it was to try to have a shared authority, to have a process that would be local, and to really give latitude to the Commission, working with the tribe's Environmental Division and the State Air Pollution Control Division to establish a program that really works best for that area.

Senator CAMPBELL. Chairman Burch?

Mr. BURCH. We have met with different elected officials. As you know, Senator, part of our reservation lies a little bit in Montezuma County, LaPlata County, and Archuleta County. We have met with the commissions in Archuleta and LaPlata to talk about some of the issues. This was certainly one of them, talking about the mutual concerns of all the people that are in that area.

So we have a good working relationship, as you know, Senator, that we try to work with the elected officials in that area.

Senator CAMPBELL. And, speaking of other jurisdictions, the southern border of the Southern Ute Reservation borders New Mexico, and it's not very far away where you have some pretty big power plants.

Mr. BURCH. Yes.

Senator CAMPBELL. Has there been any multi-jurisdiction pollution that you know of that has been a problem to the tribes from New Mexico?

Mr. BURCH. We have had some concerns on that and hearings before because of the power plants. That's why we put a monitoring station in this area to monitor the pollution that come across.

Senator CAMPBELL. That was the response to the——

Mr. BURCH. Right.

Senator CAMPBELL [continuing]. Pollution, a monitoring system?

Mr. BURCH. Right. Yes.

Senator CAMPBELL. Well, I have no further questions, and I will do my very best in these remaining days to try to move this bill forward. I know Senator Inouye is supportive of it, too. We'll do the best we can.

We are going to have a few little things we have to iron out, as you probably know, so I'm going to, with the chairman's consent, keep the record open for 2 more weeks for any additional comments that you or anybody in the audience might have.

With that, this hearing is adjourned.

Mr. BURCH. Thank you.

[Whereupon, at 12:05 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF LEONARD C. BURCH, CHAIRMAN, SOUTHERN UTE INDIAN TRIBAL COUNCIL

Chairman Inouye, Vice Chairman Campbell, and members of the committee:

I am Leonard C. Burch, chairman of the Southern Ute Indian Tribal Council. Thank you for inviting the tribe to testify today regarding S. 2065, entitled a bill to implement the intergovernmental agreement between the Southern Ute Indian Tribe and State of Colorado regarding Air Quality Control on the Southern Ute Indian Reservation. It is my pleasure to express the tribe's support for this important legislation.

In summary, the Southern Ute Indian Tribe strongly supports the bill, and urges that, with the adoption of one amendment to the bill, the committee approve, and the Senate pass, this important legislation as soon as possible.

For over 10 years, the State, tribe, and U.S. Environmental Protection Agency [EPA] have disagreed over tribal and State eligibility to receive delegations of authority to administer programs under the Clean Air Act on the Southern Ute Indian Reservation. Under the 1984 law that confirmed the boundaries of the reservation, the tribe relinquished territorial jurisdiction over non-Indians conducting activities on non-Indian land. Amendments to the Clean Air Act in 1990, however, authorized EPA to delegate primacy to tribes with respect to administration of various programs under that statute and arguably restored tribal jurisdictional authority Reservationwide for air programs. Rather than allow ourselves to become embroiled in bitter and costly litigation that would probably result in a decision unacceptable to all parties, tribal and State governmental officials have formulated a solution supported by all.

As encouraged by Congress in the Clean Air Act, the Southern Ute Indian Tribe and the State of Colorado have entered into an intergovernmental agreement concerning air quality control on the Southern Ute Indian Reservation. The agreement provides for joint participation by the tribe and the State in the regulation of air quality on the reservation. Under the agreement, a joint commission has been created (via subsequently enacted State and tribal law) composed of six (6) members, three (3) of whom are appointed by the Governor and three (3) of whom are appointed by the tribal council. The Commission, to be known as the Southern Ute Indian Tribe/State of Colorado Environmental Control Commission, has two main responsibilities. First, the Commission will determine the specific Clean Air Act, or other air programs, that should apply to the reservation and establish program standards for managing the continued discharge of pollutants. Second, the Commission will review appealable administrative actions. The tribe will incorporate the standards set by the Commission as part of its application to EPA for delegation of authority to administer Clean Air Act programs on the reservation. Once the delegation is received, the tribe will have the responsibility for day-to-day administration and enforcement of the standards, rules and regulations adopted by the Commission. Civil enforcement actions taken by the tribe will be subject to administrative review by the Commission. It is contemplated that final decisions of the Com-

mission will be subject to judicial review in Federal court. The costs associated with the tribe's administration of the program and the necessary expenses of the Commission will be funded primarily by permit fees.

As required by the agreement, a tribal resolution was enacted on January 18, 2000, authorizing the creation of the Commission and approving implementation of the agreement. Parallel State legislation approving the agreement was adopted by the Colorado General Assembly and signed by Governor Bill Owens on March 15, 2000. The agreement gives Congress until December 13, 2002, to adopt Federal legislation. If the Federal legislation is not enacted before December 13, 2002, the agreement will become null and void.

S. 2065 is needed for three reasons. First, without Federal legislation, it is unclear who has jurisdictional authority to regulate non-Indian owned sources of air pollution that are located on non-Indian fee land within the reservation boundaries. Second, implementation of the intergovernmental agreement is conditioned on the passage of Federal legislation. And third, S. 2065 is needed to clarify and provide for enforcement authority.

This legislation confirms the authority of EPA to grant the tribe "treatment as a State" status under the Clean Air Act for such time as the intergovernmental agreement remains in effect. This status will enable the tribe to administer a single air quality program on all lands with the exterior boundaries of the Southern Ute Indian Reservation, as delegated by the EPA and in accord with the rules promulgated by the Environmental Commission. Additionally, this legislation provides for exclusive Federal judicial review of final actions by the Environmental Commission, and authorizes the Tribe or the Environmental Commission, as is appropriate, to file in Federal court a petition for declaratory or injunctive relief, or for other orders in aid of enforcement, where persons have failed to comply with a final civil order of the tribe or the Environmental Commission made pursuant to the air quality program established under the intergovernmental agreement.

Section 4(b) of the bill provides that:

Nothing in this act shall be construed to alter, amend, or modify the right or authority of any person, as defined in section 302(e) of the Clean Air Act (42 U.S.C. 7601(e)), to bring an action under section 304 of such act (42 U.S.C. 7603).

The section of the Clean Air Act referred to is commonly known as a "citizens suit provision," which authorizes any person to bring certain civil actions in the Federal district courts for enforcement of the act. For four reasons, the tribe respectfully requests that the committee consider amending the bill to delete the citizen suit provision.

First, the tribe objects to the inclusion of the citizen suit language because it might be construed to be a waiver of tribal sovereign immunity from suit. The citizen suit provision in the Clean Air Act only applies to States to the extent permitted by the 11th amendment to the Constitution. Because States are subject to citizen suit liability only to the extent permitted by the 11th amendment, applying it to the tribe in this bill would make the requirement more burdensome than it would be for States.

Second, subjecting the tribe to citizen suits could hinder development of the tribe's and State's Reservation air program because it could add significant resource constraints, financial and otherwise, particularly with respect to potential litigation.

Third, citizen suit recourse is unnecessary since EPA retains the authority to directly enforce the Clean Air Act as well as to withdraw the tribe's delegation of authority in the event of non-enforcement.

And fourth, for the reasons noted above, EPA has listed the Clean Air Act's citizen suit provision among those provisions for which it is not appropriate to treat tribes in the same manner as states. See 40 C.F.R. 49.4; 63 Fed. Reg. 7254, 7260—61, 7271 (Feb. 12, 1998). The tribe is concerned, therefore, that without the removal of the citizen suit language, the Southern Ute Indian Tribe might be subject to citizen suit liability in situations where neither states, because of their 11th amendment immunity, nor other tribes, because of EPA's administrative determination, would be subject to such liability.

Therefore, the tribe objects to the inclusion in the bill of the citizen suit language and respectfully requests that the committee consider amending the bill to remove that language.

Resolution of the complex jurisdictional problems present on the Southern Ute Indian Reservation has long been a challenge. Unlike the relationship between many other states and tribes in recent years, the State of Colorado and Southern Ute Indian Tribe have been able to amicably resolve several difficult jurisdictional issues. A spirit of cooperation and a willingness of the State and tribe to negotiate on a government-to-government basis led to the development of the intergovernmental agreement. S. 2065 is needed to implement and enforce the unique and innovative

air pollution control agreement between the tribe and the State of Colorado. The approval of this bill will allow for the joint participation of the tribe and State in the regulation of air quality on the reservation. Such cooperation between an Indian tribe and a State is unprecedented in Indian country. I hope you will support this important legislation so that the agreement can be implemented.

This concludes my statement. I will be happy to answer any questions the committee may have.

PREPARED STATEMENT OF FRAN KING BROWN, DIVISION HEAD, ENVIRONMENTAL
PROGRAMS DIVISION, SOUTHERN UTE INDIAN TRIBE

Mr. Chairman, Mr. Vice Chairman, and members of the committee:

My name is Fran King Brown and I am honored to appear before you today to offer testimony in support of S. 2065.

As some of you know, the Southern Ute Indian Reservation is located in the northern portion of the San Juan Basin which is rich in natural gas production. Vast amounts of gas are produced on tribal and fee lands within the exterior boundaries of the reservation. With the boom of coal-bed methane gas development in the late 1980's and early 90's, gas production has resulted in increases in production wells, treating facilities, pipelines, compressors, and unpaved roads. Those facilities are the primary sources of air pollution that are subject to regulation. Based on an emissions inventory prepared by the tribe's Air Quality Program, particulate matter, carbon monoxide and nitrogen oxides were identified as the major pollutants generated by methane gas exploration and production. There are a total of approximately 100 sources of air pollution on the reservation. Out of those 100 sources, approximately 30 meet the criteria for classification under the Clean Air Act as a "major source." Additional economic activities such as tourism as well as a growth in population and housing have also contributed to the overall generation of air pollutants.

While the tribe is committed to develop its mineral resources, it also acknowledges a need to protect its natural environment and the health and welfare of its people. Protection of the reservation environment has always been among the tribe's major objectives. For almost 81-271 20 years, the tribe has administered an air quality program and it has long been a goal of the tribe to receive a delegation of authority from EPA to administer a comprehensive air quality control program on the reservation.

As stated by Chairman Burch, S. 2065 is needed to implement and provide for enforcement of the air quality agreement between the tribe and State of Colorado. That agreement has many benefits:

The agreement eliminates confusion and provides certainty to would-be regulators (that is, the State, Tribe and EPA) and also for those individuals who must comply with the Clean Air Act (that is, sources of air pollution). The certainty created by the agreement will minimize duplicative efforts and expenditures of monetary and program resources by the Tribe and State. I

The agreement assures the protection of air quality on the Reservation through the development of a comprehensive air quality program applicable to all lands within the boundaries of the Reservation. It is agreed that the Reservation air program to be developed under the agreement should reflect the particular interests of the Tribe, yet remain compatible with State air quality goals.

The agreement would guarantee local input in the setting and enforcement of air quality standards, subject to air quality requirements of the Clean Air Act.

The cooperative approach represented by the agreement eliminates the risk of a protracted and costly jurisdictional dispute, which dispute potentially would include the Tribe, State, EPA and regulated parties.

In conclusion, the tribe is looking forward to working cooperatively with the State to ensure the protection of air quality and, hence, the health of tribal members as well as non-Indians on the Reservation. The tribe and State need the support of Congress in order to move forward with their cooperative approach to the regulation of air pollution on the reservation. As stated by Chairman Burch, the tribe urges the committee's amendment of the bill and then its prompt consideration and approval on the Senate floor.

Thank you for the committee's time and attention. I would be happy to answer any questions.

PREPARED STATEMENT OF RENNY FAGAN DEPUTY ATTORNEY GENERAL ON BEHALF OF
KEN SALAZAR, STATE ATTORNEY GENERAL, COLORADO

I am Deputy Attorney General Renny Fagan. I am appearing on behalf of Colorado Attorney General Ken Salazar in support of S. 2065 introduced by Sen. Campbell and Sen. Allard. Attorney General Salazar was instrumental in initiating negotiations between the Southern Ute Indian Tribe [tribe] and the State of Colorado that led to the air quality agreement which is the subject of S. 2065. The final agreement is the result of cooperative efforts by the Southern Ute Indian Tribe, Governor Bill Owens, Attorney General Salazar and the Colorado Department of Public Health and Environment. Attorney General Salazar asks this committee to support S. 2065, which if adopted by Congress, will be the final step necessary to fully implement the agreement.

The Southern Ute Indian Tribe's Reservation consists of approximately 681,000 acres, located mainly in La Plata County, CO. The reservation is a checkerboard of land ownership. About 308,000 surface acres are held in trust by the United States for the benefit of the tribe ["trust lands"]. Additionally, the tribe owns the majority of the mineral estate underlying a majority of the reservation lands. The remaining 378,000 surface acres are owned in fee by non-Indians or individual tribal members ["fee lands"], or consist of national forest land.

In 1984, Congress enacted Public Law 98-290 which confirmed the exterior boundaries of the reservation. The law also clarified that the Tribe has jurisdiction over the trust lands and Indians anywhere in the Reservation, and the State has jurisdiction over non-Indians on the fee lands.

Oil and natural gas production takes place throughout the reservation. These facilities are stationary air pollution sources. Since 1970's, the State's Air Pollution Control Division has issued permits to non-Indian owned sources located on fee lands.

The Clean Air Act allows Indian tribes to be treated in the same manner as States to administer certain air quality programs. In 1998, the EPA issued regulations implementing these provisions of the act. In July 1998, the Southern Ute Tribe applied to the EPA for treatment as a state for all lands within the Reservation. On the basis of Public Law 98-290, the State was prepared to object, claiming that it had jurisdiction over the non-Indian sources on the fee lands.

Instead of a potentially long and costly fight in the Federal courts about who has jurisdiction over the fee lands, the Tribe and the State agreed to establish a single, cooperative air quality authority for all lands within the reservation. Pursuant to an intergovernmental agreement ["the Agreement"], a joint tribal/State commission will establish air quality standards. When the agreement is fully implemented, the tribe will receive a delegation of authority from EPA to administer the air quality programs, but the delegation is contingent upon and shall last only so long as the agreement and commission are in place.

Since air does not know political boundaries, a single cooperative program will achieve the best result for everyone in the area. One program will also be more efficient for the governments and for the businesses that will be regulated. The commission meets locally and will adopt a program suited to the needs of the reservation and local area. The companies affected by air quality regulation support the agreement.

We believe that this cooperative arrangement is the first of its kind in the country between a State and a tribe to regulate air quality. It is also unique to the circumstances of the Southern Ute Indian Tribe Reservation.

On December 13, 1999, the tribe, Governor Owens, and Attorney General Salazar signed the Intergovernmental Agreement. As conditions precedent to full implementation, the agreement requires the adoption of certain legislation by the tribal council, the Colorado General Assembly, and Congress. In 2000, both the tribe and the State enacted the necessary laws. When the agreement is fully implemented, this is how the Reservation Air Program would work:

No. 1. A tribal/State commission will establish air quality standards, promulgate rules and regulations pertaining to all lands and air pollution sources within the exterior boundaries of the reservation.

No. 2. The commission consists of three members appointed by the tribe and three State members appointed by the Governor. In 2001, the tribe and the Governor each named their appointees. All actions of the commission must be by majority vote of all members. The commission is not a State agency.

No. 3. The commission's other duties include holding public hearings, setting fees paid by the sources to fund the costs of the program, and conducting review of appealable administrative actions.

No. 4. Over time, the tribe will assume day-to-day responsibility for administering the air quality program, and will cooperate and coordinate with the Colorado Air Pollution Control Division. Eventually, the tribe will administer the rules and regulations of the commission.

No. 5. Funding for the program will come from fees paid by air pollution sources or EPA grants. The tribe will collect the fees and grants.

No. 6. After the commission is up and running, and after it adopts an air quality program for the reservation, the tribe will apply to the EPA to receive delegation to administer Clean Air Act programs.

No. 7. Any delegation from the EPA to the tribe is specifically conditioned upon the existence of the Intergovernmental Agreement and the commission. The tribe and the State believe that this cooperative effort will work for all people living in the La Plata County area and for the air pollution sources. The agreement provides that the State and the tribe will review how the program is working in 3 years and make any necessary adjustments. The agreement also provides that either the State or the tribe may terminate it at any time, by giving a 1-year notice. If either the State or the tribe terminate the agreement, then any EPA delegation would cease and both parties would go back to the legal positions they held before the agreement.

No. 8. The agreement provides that enforcement actions and judicial review of commission administrative actions will occur in the Federal courts.

Federal Jurisdiction. The agreement provides that the Federal courts will be the judicial forum for the enforcement of regulatory orders of the tribe or commission and for the judicial review of final agency actions of the commission. The tribe and the State chose this forum for several reasons.

First, the parties sought to establish a cooperative air quality authority that balanced the sovereign interests of both parties. Neither party wanted to authorize the judicial system of the other party as having jurisdiction for judicial enforcement orders or review of commission actions. To do so would have given the courts of one sovereign authority over what is designed to be a joint regulatory authority. Therefore, the State and the tribe viewed the Federal courts as being a neutral forum. As such, ensuring that the Federal courts have jurisdiction is a fundamental part of the agreement.

Second, under the agreement, the commission serves as the “final agency action” for purposes of the air quality regulation. If the State and tribe had not reached the agreement and if the EPA had stepped in to serve as the regulatory authority, then the Federal district court would have jurisdiction over enforcement actions of EPA and the Federal administrative procedure act would have governed judicial review of EPA final agency actions. In this respect, the agreement provides that the commission will serve the same functions or “stand in the shoes” of the EPA. Therefore, it seemed appropriate to provide that the Federal courts would serve the same role as if EPA was the regulatory authority.

S. 2065 implements Federal jurisdiction. Section 4 provides that the United States District Court for the district of Colorado shall have jurisdiction over action brought by the tribe or the commission for declaratory or injunctive relief to enforce civil orders. Section 5 provides that any decision of the commission that would have been subject to appellate review if that decision had been made by EPA is reviewable by the United States Court of Appeals for the 10th circuit applying the same standard applicable to a final agency action of the EPA.

Tribal Authority. Under the Agreement, the State will support a delegation of “treatment as a State” status by EPA to the tribe, but only so long as the Agreement and Commission remain in effect. Because of the unique nature of this delegation, both parties want to ensure that EPA is authorized to and will grant a delegation in these circumstances. Section 3(a) of the bill makes the necessary authorization to EPA.

While both the tribe and the State are committed to the success of the joint reservation air program, the agreement provides that either party may terminate the agreement. Upon termination, both parties return to the legal positions they held prior the agreement. Thus, the State would return to its legal position that the EPA is without authority to grant the tribe regulatory authority over the fee lands. It is vital to the State that the Federal legislation preserve this legal right. Section 3 (b) does so by providing that if the agreement is terminated, the EPA “shall promptly take appropriate administrative action to withdraw” treatment as a State delegation to the tribe.

Limited Scope of S. 2065. Public Law 98–290 sets forth jurisdiction of lands within the exterior boundaries of the reservation. In establishing the commission and the Reservation Air Program, the parties specifically provided that the agreement did not affect any other aspect of the jurisdiction of either party regarding

such lands. The State and the tribe also want to ensure that Congressional enactment of S. 2065 will not be construed as changing in any way any other aspect of the existing jurisdiction. Section 6 of the bill clearly narrows the effect of this legislation.

The agreement between the State and the tribe for the joint regulation of air quality for all lands within the reservation is a unique cooperative endeavor. Both parties believe that this cooperative regulatory authority is a practical solution to a potentially divisive legal conflict and a solution that will enhance air quality for all residents within the exterior boundaries of the reservation. Adoption of S. 2065 will implement the provisions necessary at the Federal level to fully implement the agreement. Attorney General Ken Salazar urges your support of the bill.

STATE OF COLORADO, DEPARTMENT OF LAW,
OFFICE OF THE ATTORNEY GENERAL,
Denver, CO, July 12, 2002.

Hon. DANILE K., INOUE,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR SENATOR INOUE: Thank you for the invitation to testify before the U.S. Senate Indian Affairs Committee regarding S. 2065, a bill to Ratify an Agreement to Regulate Air Quality on the Southern Ute Indian Reservation. I regret that I am unable to be present, but I will be represented at the hearing on July 18, 2002 by Deputy Attorney General Renny Fagan, who has served as the lead attorney from my Office on all matters pertaining to this issue.

The Southern Ute Indian Tribe and the State of Colorado have a long history of working together to resolve contentious issues through negotiation. The Intergovernmental Agreement between the Tribe and the State concerning air quality control on the Southern Ute Indian Reservation (the Agreement) is another historic example of this cooperation. The Agreement establishes a Tribal/State Commission to regulate air quality concerning all lands and people within the exterior boundaries of the Southern Ute Indian Reservation. Since air does not know political boundaries, a single cooperative program will achieve the best result for everyone in the area.

I believe that two sovereign governments work best together by cooperating to achieve solutions to common problems. This Agreement avoids costly litigation over competing jurisdictional claims by the Tribe, State and Federal Government. But more importantly, the Agreement provides a practical way to maintain air quality for everyone. One program will also be more efficient for both the governments and for the regulated businesses.

In 2000, the Colorado General Assembly unanimously adopted the Agreement and legislation to implement it. The oil and gas industry supported the Agreement during the legislative process, and continues to do so.

I greatly appreciate Senator Ben Nighthorse Campbell bringing S. 2065 to the Committee. This bill represents the final step necessary to fully implement certain aspects of the Agreement. S. 2065 authorizes the Environmental Protection Agency to delegate "treatment as a state" status to the Tribe as provided in the Agreement. The bill also implements parts of the Agreement that provide for the civil enforcement of regulatory orders of the Tribe or the Commission and for the judicial review of final agency actions of the Commission in the Federal courts. The details of the Agreement and the need for S. 2065 are more fully set forth in the attached written testimony of Mr. Fagan.

I strongly urge the Committee to support S. 2065.

Sincerely,

KEN SALAZAR, *Attorney General.*

PREPARED STATEMENT OF CHRISTIE TODD WHITMAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Good afternoon, Mr. Chairman and Members of the Committee. I appreciate this opportunity to provide the Administration's views on S. 2065, the "Southern Ute and Colorado Intergovernmental Agreement Act of 2002."

The Environmental Protection Agency [EPA] is charged with responsibility, under the Clean Air Act, with ensuring protection of the Nation's air quality. In discharging our responsibilities, we work closely with States and tribes and encourage them to take the leadership role within their jurisdictions to provide for the protection of their air quality. EPA has been privileged to work with the Southern Ute Indian

Tribe and the State of Colorado for over 5 years in the development of this unique Intergovernmental Agreement concerning air quality control. The Tribe and the State jointly led the effort and EPA played a supportive role of providing technical assistance. EPA participated at the signing of the Agreement on December 13, 1999, between the Governor of Colorado and the Vice Chairman of the Southern Ute Indian Tribe.

Since the Agreement was entered into in 1999, the State and the Tribe have made considerable progress in developing the capacity of the Southern Ute/State of Colorado Environmental Commission to provide for the regulation of air quality within the exterior boundaries of the Southern Ute Indian Reservation. Further, the Tribe has begun to build its professional, managerial, and regulatory capacity so as to be able to effectively provide for the many responsibilities of regulating air quality including permit writing, inspection and enforcement of the Clean Air Act and rules to be written by the Commission. The State has provided and continues to provide—technical assistance to the Tribe.

Currently, EPA is the issuing agent within the Reservation for Clean Air Act Title V Operating Permits and has, to date, issued 22 and has 9 in process. In the event that S. 2065 becomes law and the Tribe applies for and EPA grants authorization to the Tribe to administer the Title V Operating Permits Program, the EPA will, in an orderly manner, “turn over” those permits to the Tribe to administer.

The Administration views the Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado as an appropriate instrument that can serve the needs of protecting and effectively regulating air quality within the exterior boundaries of the Reservation in a manner consistent with the Clean Air Act. EPA has worked cooperatively with both the Tribe and the State to implement the Agreement and will continue to provide support and encouragement. For those reasons, the Administration supports passage of S. 2065.

Thank you Mr. Chairman and Members of the Committee for the opportunity to present the Administration’s views.

U.S. ENVIRONMENTAL PROTECTION AGENCY
Washington, DC, July 15, 2002.

Hon. DANIEL K. INOUE,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR SENATOR INOUE: Thank you for the opportunity to provide written testimony for the Committee’s hearing on, July 18, 2002 regarding S. 2065. I appreciate the opportunity to provide the Administration’s Views on your efforts to ratify an agreement to regulate air quality on the Southern Ute Indian Reservation. Enclosed is written testimony to be included in the hearing record.

The Administration supports passage of S. 2065. In particular, the Environmental Protection Agency (EPA) has worked closely with States and Tribes to support their efforts to protect their air quality. EPA has been privileged to work with the Southern Ute Indian Tribe and the State of Colorado for over 5 years in the development of a unique, Intergovernmental Agreement concerning air quality control. The Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado is an appropriate instrument for protecting and effectively regulating air quality within the Reservation in a manner consistent with the Clean Air Act. EPA has worked cooperatively with both the Tribe and the State to implement the Agreement and will continue to provide support and encouragement. It is for these reasons that the Administration supports ratification of the Intergovernmental Agreement.

Again, thank you for the opportunity to provide the Administration’s views. I hope you will find the testimony useful. If you have further questions, please contact me or your staff may contact Michele McKeever in my office.

Sincerely,

EDWARD KRENICK, *President*

COLORADO PETROLEUM ASSOCIATION

Denver, CO, July 16, 2002

Hon. DANIEL K. INOUE,
*Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.*

DEAR CHAIRMAN INOUE: The Colorado Petroleum Association "CPA" would like to take this opportunity to express its strong support for S. 2065 ratifying an Agreement to Regulate Air Quality on the Southern Ute Indian Reservation. The Colorado Petroleum Association represents the oil and gas industry in Colorado, including many of the producers as well as gathering and processing companies operating on "fee lands" located within the exterior boundaries of the Southern Ute Reservation. CPA respectfully asks that this letter be placed in the record supporting S. 2065.

CPA and its members have strongly supported the efforts of the Southern Ute Tribe and the State of Colorado to work together to protect the air quality in Southwestern Colorado, while at the same time allowing for the development of natural gas resources so important to the Southern Ute Tribe, State of Colorado, and the entire United States. S. 2065 ratifies a historic agreement reached in 1999 which successfully resolves very difficult jurisdictional issues regarding the treatment of "fee lands" under the Clean Air Act. CPA notes that the agreement before you was approved unanimously by the Colorado General Assembly.

CPA believes that this agreement is beneficial to the oil and gas industry because it fully resolves the question of who will regulate our industry with regards to implementation to the Clean Air Act. The agreement before you allows the Southern Ute Tribe and the State of Colorado to work cooperatively to properly regulate the activities that affect air quality in this area. As you might expect, our members who must meet the requirements of the Clean Air Act are anxious to avoid the situation in which companies must answer to duplicate regulatory agencies. Furthermore, CPA appreciates the efforts by the Environmental Protection Agency, State of Colorado and the Southern Ute Tribe in assisting our members obtain the necessary permits needed to operate their businesses as the difficult jurisdictional issues are resolved.

CPA wishes to thank the committee for its consideration of this important legislation, and Senator Campbell for his leadership in sponsoring S. 2065. CPA looks forward to working with the Southern Ute Tribe as well as the State of Colorado and the Environmental Protection Agency in the implementation of this historic agreement.

Sincerely,

STAN DEMPSEY, JR., *President.*

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